

# **Exhibit C**

## James A. Bloom

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**From:** Dylan D. Rudolph <[drudolph@truckerhuss.com](mailto:drudolph@truckerhuss.com)>  
**Sent:** Thursday, June 07, 2018 5:10 PM  
**To:** James A. Bloom; Jim Miller; Brad Huss  
**Cc:** Edwards, Randall W.; [csekino@sfmslaw.com](mailto:csekino@sfmslaw.com); [jreinhart@sfmslaw.com](mailto:jreinhart@sfmslaw.com); [ktang@sfmslaw.com](mailto:ktang@sfmslaw.com); [rkravitz@sfmslaw.com](mailto:rkravitz@sfmslaw.com); [lrubinow@sfmslaw.com](mailto:lrubinow@sfmslaw.com); [nzipperian@sfmslaw.com](mailto:nzipperian@sfmslaw.com); [monique@osclegal.com](mailto:monique@osclegal.com); [kathy@osclegal.com](mailto:kathy@osclegal.com); [sahagii@aol.com](mailto:sahagii@aol.com); Angel L. Garrett; Emily L. Garcia; Joseph C. Faucher; Todd M. Schneider; Jason H. Kim; Kyle G. Bates; Kaplan, Adam M.; Boyle, Brian; James Shah; John J. Nestico  
**Subject:** RE: Lorenz v Safeway, No 16-cv-4903 (JST) (N.D. Cal.)

James,

We disagree with the breadth of your request. Federal Rule 26(a)(2)(B)(ii) pertains to facts and data considered by Mr. Gissner in forming the opinions contained in his May 22, 2018 report. Courts interpret “facts or data considered” as “data and information [] the expert saw, heard, considered, read thought about or relied upon” in forming the opinions in the expert’s written report. *Lewert v. Boiron, Inc.*, 212 F. Supp. 3d 917, 931-32 (C.D. Cal. 2016) (citing *Propat Int’l Corp. v. Rpost, Inc.*, No. SACV031011, 2005 WL 5957834, at \*1 (C.D. Cal. Sept. 19, 2005)). This provision does not, however, pertain to facts or data that Mr. Gissner may have in his possession, which he did not consider in forming his opinions. Apart from the “Data” identified as “OHC Plans” noted in Appendix B to Mr. Gissner’s report (that you reference below), your requests are outside of the scope of Federal Rule 26(a)(2)(B)(ii).

The OHC Plans data that Mr. Gissner considered in forming the opinions in his May 22 report can be found at the following link:

<https://truckerhuss.sharefile.com/d-sbdf9926ecc34df08>

To preserve the confidentiality of the OHC Plans, identifying information related to the plans was removed from the spreadsheets for the purposes of creating Mr. Gissner’s report, and only the raw data was used.

We note that Exhibit 2 to Mr. Witz’s report references “Information on expenses and performance reflected in this report was provided by PlanTools and Morningstar as the data source.” We have not received any facts or data that Mr. Witz obtained from PlanTools and Morningstar in forming the opinions in his report, and request that you provide this information.

If you have any questions or wish to discuss this further, please let us know.

Dylan

**Dylan Rudolph | Trucker Huss, APC**

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**From:** James A. Bloom [mailto:[jbloom@schneiderwallace.com](mailto:jbloom@schneiderwallace.com)]

**Sent:** Monday, June 04, 2018 4:40 PM

**To:** Jim Miller; Brad Huss

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**Subject:** Lorenz v Safeway, No 16-cv-4903 (JST) (N.D. Cal.)

**Brad:**

Pursuant to Federal Rule of Civil Procedure 26(a)(2)(B)(ii), please produce the following information with respect to Mr. Gissiner's opinion:

- The "Data" identified as "OHC Plans" on "Appendix B – Documents Considered"
- All records in his possession related to the OHC Plans identified in his report, including, but not limited to, documents supporting the conclusions he reaches about the OHC Plans
- Any agreements defining OHC's relationship, if any, with the OHC Plans or any service providers to the OHC Plans related to the OHC Plans
- A list of other any other plans, either (i) for which OHC provides services, or (ii) which OHC has analyzed in the course of providing its services, with either \$500 million or more in assets or 5,000 or more participants with balances, as well as any information in his possession about the scope and cost of administrative, investment and other services paid by those plans

Thanks very much,

James



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